

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ROLLAND JACKSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-10022
Trial Court No. 4FA-07-556 Cr

MEMORANDUM OPINION

No. 5500 — July 22, 2009

Appeal from the Superior Court, Fourth Judicial District,
Fairbanks, Randy M. Olsen, Judge.

Appearances: Margi Mock, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Terisia K. Chleborad, Assistant Attorney General, Office of
Special Prosecutions and Appeals, Anchorage, and Talis J.
Colberg, Attorney General, Juneau, for the Appellee.

Before: Coats, Chief Judge, and Mannheimer and Bolger,
Judges.

MANNHEIMER, Judge.

This case presents two inter-related issues of search and seizure law: whether the defendant was subjected to an investigative stop and, if so, whether that stop was justified by a reasonable suspicion of imminent public danger. We need not resolve the first issue because we conclude that, even assuming the defendant's encounter with

the police amounted to an investigative stop, the stop was justified by reasonable suspicion.

Underlying facts

Shortly after 1:00 a.m. on February 22, 2007, the front desk clerk at the Golden Nugget Hotel in Fairbanks called the police to report that an intoxicated man had just left the hotel, driving a van. The clerk indicated that the van was headed toward downtown.

The hotel clerk had written down the license plate number of the van, and the clerk relayed this information to the police dispatcher. When the dispatcher ran this license plate number through the police computer, the dispatcher learned that the van had been reported as stolen.

The hotel clerk also gave the police dispatcher a description of the driver and his passenger. According to the clerk, the driver was a Native male, wearing brown Carhartt overalls, and the passenger was a heavy-set Native female, dressed in all black.

Fairbanks Police Officer Avery Thompson, accompanied by another officer who was in training, responded to this dispatch and began searching the downtown area. They soon received word that other officers had located the van — now unoccupied — parked outside the Mecca Bar (in downtown Fairbanks).

As Officer Thompson turned from Third Avenue onto Cushman Street, he observed a Native male wearing brown Carhartt overalls walking southbound on Cushman Street. (This man was later determined to be Rolland Jackson.) When Jackson saw the police car, he turned and started walking quickly in the other direction — *i.e.*, northbound on Cushman Street. At this point, about two minutes had elapsed from the time the officers first received the dispatch.

Thompson parked his car and then he approached Jackson; Thompson told Jackson to wait a moment because he wanted to speak with him. When Thompson engaged Jackson in conversation, he observed that Jackson was heavily intoxicated. During this conversation, Jackson first admitted, and then denied, that he had been drinking; but Jackson declared that he had not been driving, and he also declared that he had not been near the Golden Nugget Hotel.

After about ten minutes, while Thompson and Jackson were still talking, the hotel desk clerk arrived at the scene. The clerk identified Jackson as the intoxicated man she saw getting into the van. Based on the clerk's identification, Thompson arrested Jackson.

Jackson was charged with first-degree vehicle theft, felony driving under the influence, and driving with a suspended license. He was also charged with felony breath-test refusal because, following his arrest, he refused to submit to a breath test.

Following his indictment, Jackson filed a motion to suppress the evidence obtained as a result of his encounter with Officer Thompson. Jackson argued that this encounter was an investigative stop, and that this stop was unlawful. Jackson contended that the stop was unlawful because the police lacked a reasonable suspicion that Jackson was the man who the hotel clerk had seen driving away from the Golden Nugget Hotel. Jackson argued in the alternative that, even if the police had a reasonable suspicion that he was the driver, the investigative stop was still unlawful because the public danger posed by his drunk driving had ended and was no longer imminent.¹

¹ See *Coleman v. State*, 553 P.2d 40, 46 (Alaska 1976) (holding that, under the Alaska Constitution, the authority of law enforcement officers to conduct investigative stops on less than probable cause is limited to situations where the officers have reasonable suspicion of imminent public danger or of recent serious harm to persons or property).

After holding an evidentiary hearing, Superior Court Judge Randy M. Olsen denied the suppression motion. Judge Olsen ruled that the encounter between Thompson and Jackson was not an investigative stop, but was just a “contact” between a citizen and a police officer, and therefore the police did not need a reasonable suspicion of criminal conduct before engaging Jackson in conversation.

Following the denial of his suppression motion, Jackson entered into a *Cooksey* plea agreement with the State.² Under the terms of this agreement, (1) Jackson pleaded no contest to first-degree vehicle theft and felony driving under the influence, (2) the State dismissed the two remaining charges (felony breath-test refusal and driving with a suspended license), and (3) Jackson preserved his right to appeal the superior court’s denial of his suppression motion.

Even if the police encounter with Jackson amounted to an investigative stop, that stop was supported by reasonable suspicion

Alaska law distinguishes “investigative stops” (instances where the police temporarily detain someone) from “citizen contacts” (instances where the police simply approach a citizen and ask questions or otherwise engage in conversation).³ When the police simply put general questions to a person, even a suspect at the scene of a crime, this does not constitute an investigative stop; it is not a “seizure”.⁴ On the other hand,

² In *Cooksey v. State*, 524 P.2d 1251, 1255-57 (Alaska 1974), the Alaska Supreme Court authorized the procedure whereby a defendant can plead guilty or no contest but nevertheless preserve a dispositive issue for appeal.

³ *Romo v. Anchorage*, 697 P.2d 1065, 1067-68 (Alaska App. 1985); *Howard v. State*, 664 P.2d 603, 608 (Alaska App. 1983).

⁴ *Romo*, 697 P.2d at 1068 (citing *Palmer v. State*, 604 P.2d 1106, 1111-13 (Alaska 1979) (Rabinowitz, C.J., concurring)).

when the police restrain a person's liberty, either by physical force or by a show of authority, then a seizure has occurred — and, depending on the extent of the seizure, it must be justified either by reasonable suspicion (the standard that applies to investigative stops) or by probable cause (the standard that applies to arrests).⁵

In Jackson's case, the parties disagree as to the proper legal characterization of Officer Thompson's initial approach to Jackson. Jackson asserts that when Thompson asked Jackson to wait a moment and speak to him, this statement amounted to a show of authority that turned the encounter into an investigative stop. The State asserts that, given the surrounding circumstances, a reasonable person in Jackson's position would have interpreted Thompson's words as merely the kind of statement that any person might address to a stranger if they wanted to initiate a conversation. We need not resolve this controversy, because we conclude that even if Jackson was subjected to an investigative stop, that stop was justified by reasonable suspicion.

Under the rule announced by our supreme court in *Coleman v. State*, 553 P.2d 40, 46 (Alaska 1976), police officers can conduct an investigative stop only if they have a "reasonable suspicion that imminent public danger exists or [that] serious harm to persons or property has recently occurred". The "fundamental inquiry in each case is whether 'a prompt investigation [was] required ... as a matter of practical necessity.' " *State v. G.B.*, 769 P.2d 452, 456 (Alaska App. 1989) (quoting *Coleman*, 553 P.2d at 46).

Because Judge Olsen concluded that the encounter between Jackson and Thompson was merely a citizen contact, the judge did not decide whether Thompson had adequate justification for an investigative stop. However, in his ruling, Judge Olsen noted (1) that the encounter between Thompson and Jackson occurred a very short time

⁵ *Waring v. State*, 670 P.2d 357, 363 (Alaska 1983). Federal law incorporates this same doctrine: *Terry v. Ohio*, 392 U.S. 1, 19 n. 16; 88 S.Ct. 1868, 1879 n. 16; 20 L.Ed.2d 889 (1968).

after the police received the phone call from the hotel clerk, (2) that Jackson was coming from the direction of the abandoned van, (3) that Jackson was the only person on the street when the officers first saw him, and (4) that Jackson turned and began walking away from the officers as soon as he observed them. Additionally, Officer Thompson testified at the evidentiary hearing that Jackson matched the description of the driver of the van supplied by the hotel clerk (a Native male wearing brown Carhartt overalls), and this testimony was not disputed.

We conclude that, given these circumstances, Thompson could justifiably subject Jackson to an investigative stop. Given the information known to the police, combined with Jackson's attire, his location, and his reaction to seeing the officers, Thompson could reasonably suspect that Jackson was the man who, minutes before, had been driving a stolen vehicle while under the influence of intoxicants.

Over thirty years ago, shortly after the Alaska Supreme Court announced the *Coleman* limitation on investigative stops, the court held that driving a motor vehicle under the influence is conduct that qualifies as an "imminent public danger" for purposes of the *Coleman* test. *Ebona v. State*, 577 P.2d 698, 701 (Alaska 1978).

It is true that, at the time of Jackson's encounter with the officers, Jackson had ceased driving. However, the supreme court recently held that an investigative stop is lawful when the police have a reasonable suspicion that a person who is under the influence has just stopped driving, at least when there are no circumstances affirmatively indicating that the intoxicated person will not resume driving. *Hartman v. Division of Motor Vehicles*, 152 P.3d 1118, 1123-24 (Alaska 2007).

The supreme court's decision in *Hartman* comports with this Court's earlier decisions in *Larson v. State*, 669 P.2d 1334, 1337 (Alaska App. 1983), *Romo v. Anchorage*, 697 P.2d 1065, 1069-1070 (Alaska App. 1985), and *Shearer v. Anchorage*,

4 P.3d 336, 339-340 (Alaska App. 2000). In all three of these cases, this Court upheld investigative stops of DUI suspects even though the suspects had recently ceased driving.

We therefore conclude that, under the facts of Jackson's case, even if Officer Thompson's approach to Jackson was an investigative stop, that investigative stop met the *Coleman* test.

Conclusion

The judgement of the superior court is AFFIRMED.